



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 8, 2005

Ms. YuShan Chang
Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2005-10102

Dear Ms. Chang:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 235904.

The Houston Police Department (the "department") received a request for information regarding a specific incident report. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.1175, 552.130, 552.136, and 552.147 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses the doctrine of common law privacy. Gov't Code § 552.101. Common law

¹ We note that you failed to timely assert section 552.101 of the Government Code. See Gov't Code § 552.301(b) (governmental body must state exceptions that apply not later than tenth day after receiving request). However, because this section is a mandatory exception, we will address your argument. See Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to section 552.302).

privacy protects information if it (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. Information also may be withheld under section 552.101 in conjunction with common law privacy upon a showing of certain “special circumstances.” *See* Open Records Decision No. 169 (1977). This office considers “special circumstances” to refer to a very narrow set of situations in which the release of information would likely cause someone to face “an imminent threat of physical danger.” *Id.* at 6. Such “special circumstances” do not include “a generalized and speculative fear of harassment or retribution.” *Id.* The department raises the special circumstances aspect of common law privacy for a “cool phone” number as well as the pager number of an undercover officer in the submitted documents. The department informs us that “a cool phone number is a [Houston Police Department] phone number used by undercover officers to contact suspects who are the subjects of undercover operations or investigations.” Furthermore, the department asserts that release of the officer’s pager number “would enable suspects, defendants, or convicted individuals to contact the undercover officer and jeopardize the safety and privacy of the officer and his family.” Based on your representations, we conclude that in this instance the “cool phone” number and officer’s pager number in Exhibit 2 are confidential under section 552.101 in conjunction with common law privacy and must be withheld. We have marked additional information that must be withheld under section 552.101 in conjunction with common law privacy.

Next, the department asserts that portions of the submitted information must be withheld pursuant to section 552.1175 of the Government Code. Section 552.1175 provides in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure[.]

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

- (1) chooses to restrict public access to the information; and
- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Gov't Code § 552.1175(a),(b). The submitted records contain information pertaining to a Houston peace officer held by the department in a non-employment context. If this individual is among the types of individuals listed in section 552.1175(a) and elects to restrict access to this information in accordance with section 552.1175, the department must withhold the information we have marked. Otherwise, the department must release this information.

You also contend that other submitted information must be withheld under section 552.130 of the Government Code. This section excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the information that you have marked in addition to the information we have marked under section 552.130.

Additionally, you claim that a portion of the remaining submitted information is subject to section 552.136 of the Government Code. Section 552.136 provides that "[n]otwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential." Gov't Code § 552.136. Accordingly, the department must withhold the information you have marked pursuant to section 552.136 of the Government Code.

Finally, we note that the submitted information contains social security numbers. Section 552.147 of the Government Code² provides that "[t]he social security number of a living person is excepted from" required public disclosure under the Act. Therefore, the department must withhold the social security numbers you have marked under section 552.147.³

In summary, the department must withhold (1) the information we have marked under section 552.101 of the Government Code in conjunction with common law privacy, (2) the information marked under section 552.1175, if this individual is currently a licensed peace

²Added by Act of May 23, 2005, 79th Leg., R.S., S.B. 1485, § 1, sec. 552.147(a) (to be codified at Tex. Gov't Code § 552.147).

³ We note that section 552.147(b) of the Government Code authorizes a governmental body to redact a living person's social security number from public release without the necessity of requesting a decision from this office under the Act.

officer who elects to restrict access to this information, (3) the marked information relating to motor vehicle registration and drivers' licenses under section 552.130, (4) the marked bank account numbers under section 552.136, and (5) social security numbers under section 552.147. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Lehmann", written in a cursive style.

Michael A. Lehmann
Assistant Attorney General
Open Records Division

MAL/sdk

Ref: ID# 235904

Enc. Submitted documents

c: Mr. Antonetti Galvan
935 Hahlo
Houston, Texas 77020
(w/o enclosures)